

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-71293

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee,

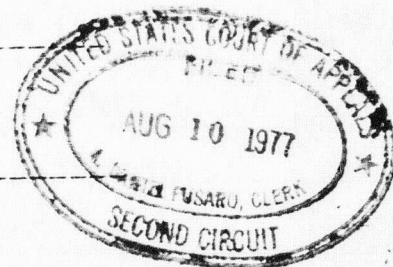
-against-

STANLEY FORSACK,

Appellant.

*On Appeal From The United States District
Court For the Eastern District of New York*

APPELLANT'S APPENDIX



ROGER W. KOHN
Attorney for Appellant
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA

T-7520

77 CR 84

- against -

STANLEY FORSACK

Defendant.
-----x

Indictment

1

Notice of Appearance

2

Combined Motions to suppress, bill of
particulars & Discovery etc.

3

Judgment and Commitment

4

Notice of Appeal

5

Briefing Schedule

6

Steno transcript of 4/11/77

7

Steno transcript of 4/11/77
afternoon session

8

Steno transcript of 4/12/77

9

Steno transcript of 4/13/77

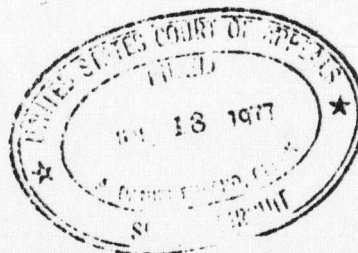
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Steno transcript of 4/14/77

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Clerks certificate

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3,442

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

77CR 84

----- X

UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

STANLEY FORSACK,

Defendant.

Cr. No. _____

FILED 18, U.S.C., §922(a)(1)
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ FEB 10 1977 ★

TIME X A.M. _____
P.M. _____

THE GRAND JURY CHARGES:

From on or about the 29th day of September 1976 through and including the 14th day of October 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendant STANLEY FORSACK, who was not then and there a licensed importer, licensed manufacturer, or licensed dealer, did knowingly, intentionally and unlawfully engage in the business of dealing in firearms. (Title 18, United States Code Section 922(a)(1)).

A TRUE BILL

Victoria Klepper
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-against-

STANLEY FORSACK

FILED
Plaintiff's OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAR 3 1977

★ 77 CR 84

TIME A.M.

P.M.

Defendant. :

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Defendant STANLEY FORSACK by his attorney ROGER W. KOHN, ESQ., respectfully moves this court pursuant to the Federal Rules of Criminal Procedure at the courthouse thereof, Court-room No. 7, 225 Cabman Plaza East on the 4th day of March, 1977 at 10:00 A.M. in the forenoon of that or as soon thereafter as counsel can be heard for an order

1. Directing the United States Attorney to serve a bill of particulars and to disclose the information setforth below:

- (a) Ballistic reports covering each and every weapon allegedly the subject of transactions by defendant, while allegedly engaged in the business of dealing with fire-arms;
- (b) Investigative report (No. 6) of Alcohol, Tobacco and Fire-arms Division of Agents of the United States Treasury Department furnished to the United States attorney's office;
- (c) Date and place of each alleged act of dealing in

4a
fire-arms which the people intend to establish at trial.

- (d) Transcripts of any wire tap evidence and transcripts of any recorded conversations of defendant.

2. Directing the United States attorney to produce and give to the defense counsel any and all exculpatory evidence as more particularly described below:

- (a) All information of whatever form, source or nature which tends to exculpate the Defendant either through an indication of his innocence or through the potential impeachment of any government witnesses, and all information of whatever form, source or nature which may lead to evidence which tends to exculpate the Defendant whether by indicating his innocence or impeaching the credibility of any potential government witness, and all information which may be or become of benefit to the defendant preparing for or presenting the merits of his defense of innocence at trial. The request includes all facts and information of whatever form, source or nature, which the United States Attorney (or his assistants), the Federal Bureau of Investigation, the Internal Revenue Service, United States Treasury Department, Division of Alcohol, Tobacco and Fire-arms, or any of their agents has or

knows about which is or may be calculated to become of benefit to the Defendant either on the merits of the case or on the question of credibility of witnesses;

- (b) The names, addresses and telephone numbers of any persons the government knows to possess relevant information to the charges in the indictment, including but not limited to any informants or confidential sources;
- (c) The minutes of the grand jury testimony of PIERCE ROGERS & ANTHONY RONDELLO received in connection with the above-captioned case.

3. For an hearing suppressing any statements or admissions or confessions made by the defendant at the time of his arrest or thereafter upon the ground that same were involuntarily made and were secured in violation of defendant's rights under the constitution of the United States.

As grounds for this combined motion, defendant states that the requested matter is material and necessary to the preparation of his defense on the merits of the charges against defendant and that the items are evidentiary and the production of them is reasonable and will expedite the trial of the cause and materially aid the defendant in the preparation of his defense, that some of the material requested is exculpatory in nature,

and such other reasons as shall appear at the hearing upon this Motion.

Dated: New York, N.Y.
February 26, 1977

Yours etc.,

ROGER W. KOHN, ESQ.,
Attorney for Defendant
Office & P.O. Address
21 East 40th Street
New York, N.Y. 10016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

Plaintiff, :

-against- :

STANLEY FORSACK :

Defendant. :

-----x

A F F I R M A T I O N

ROGER W. KOHN, ESQ., attorney at law duly admitted to practice law in the courts of New York State does hereby affirm under the penalties of perjury pursuant to the provisions of section 2106 of the C.P.L.R. as follows:

I submit this affirmation in support of the within application.

AS TO THE FIRST BRANCH OF THE MOTION

Deponent had a conference with MR. ELIA WEINBACH, Assistant United States Attorney in this matter on February 23, 1977 at which time MR. WEINBACH agreed to furnish deponent item (1) (a) as demanded.

Item (1) (b) is necessary and material to the defense of the within proceeding, however, the Assistant United States Attorney refused to furnish said report, but did furnish an extract of the report concerning certain admissions made by the defendant at the time of and subsequent to his arrest.

Item (1) (c) was not completely furnished by MR. WEINBACH and request is made for same.

AS TO THE SECOND BRANCH OF THE MOTION

Deponent believes that there may be exculpatory material in the files of the United States attorney's office and believes that same should be furnished under the rules annunciated in "PEOPLE against BRADY".

Items (b) and (c) are relevant and necessary to the defense of the within proceeding.

AS TO THE THIRD BRANCH OF THE MOTION

At our conference MR. WEINBACH furnished deponent with an exert from the investigative report of the Agent of the Division of Alcohol, Tobacco and Fire-arms in which the agent indicated certain statements and admissions had been made by the defendant after his arrest.

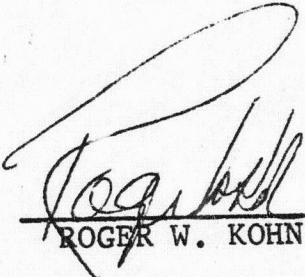
The defendant has informed me that such statements if they were made, were made involuntarily and under a promise made by an agent of the Alcohol, Tobacco and Fire-arms Division of the United States Treasury Department, that the defendant would not be prosecuted for the crime alleged in the indictment.

It is respectfully requested that an hearing would be necessary in order to establish just what statements were made by the defendant, whether written or oral, and the circumstances under

which such statements if any were made. I believe that these statements are and will be a vital part of the prosecution's case and will be most vital to the defendant's defense.

WHEREFORE, I respectfully request that the relief sought in the Notice of Motion be granted in all respects.

Dated: New York, N.Y.
February 26, 1977



ROGER W. KOHN

10a

WEINBACH-Cross

1
2 A I, I don't know if it was at that time, but I was
3 aware either he had gone to Syracuse to lead the agents to his
4 supplier, or was going to. I was aware of it generally.

5 Q Have you ever spoken to Agent Sammis?

6 A I don't believe I had spoken to that agent, no. I
7 think I've spoken to Agent Rogers.

8 Q And wasn't there a discussion, was there a discussion
9 in your office, in January, with regard to his going to Syracuse,
10 with immunity from prosecution?

11 A That part, I don't remember. I mean I don't know
12 anything what would happen with Syracuse, I know what happened
13 in our office.

14 Q As far as you know, he may have gone to Syracuse,
15 but you would have no knowledge of that?

16 A Right.

17 MR. KOHN: I have no further questions.

18 THE COURT: You may step down. Thank you.

19 MISS SCHWARTZ: No further witnesses, your Honor.

20 THE COURT: That's the end?

21 MR. KOHN: Defendant has no further witnesses.

22 THE COURT: All right, the Court denies the Defendant
23 motion to suppress the statements made. The Court finds that
24 the Defendant was warned on at least three occasions, first
25 by the Detective from Nassau County when he was first arrested.

11a

1 Second, by Mr. Rogers in Nassau County Precinct car, and
2 third, by the Magistrate prior to, or in connection with his
3 arraignment, and all of his statements thereafter were
4 voluntarily made. Indeed, they weren't even part of a
5 custodial arrest, because he was free to come and go from
6 the Magistrate, and he had an attorney at that point, if he
7 saw fit. He voluntarily took the ride offered to him by the
8 agent, and voluntarily entered into discussion with them on
9 the way home when he was not in custody. He was there of
10 his own volition in this car.

11 Overnight, he had further opportunity to reflect on
12 it. He voluntarily showed up at the office the next day and
13 still again, there was no custodial interrogation, as that
14 term is used, because as I say, he appeared there voluntarily
15 and proffered his services.

16 Insofar as the claim that he was proffered immunity is
17 concerned, the Court finds that not to be the facts, certainly,
18 with respect to transactional immunity, and if there was
19 any assuming arguendo, that there was any such testimonial
20 immunity offered, there was no testimony given in Syracuse
21 and as though he's not entitled to any testimonial immunity
22 from any such testimony, that was not given, but the Court
23 finds there was no such testimonial immunity offered either,
24 or at least not perfected, because his attorney went on
25 negotiations with respect to the plea, with respect to the

1 U.S. Attorney's office, and offering to plead guilty and
2 of course, his attorney being consulted, would never had
3 done such if he had been offered any immunity. So, the
4 Court finds it to be wholly false and untrue and, therefore,
5 the Court denies the motion.

6 Can we send for a Jury?

7 We can't send for a Jury until 2:00 o'clock, the
8 Clerk tells me.

9 MR. KOHN: Your Honor, I would like to record an
10 exception on the record.

11 THE COURT: Of course.

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FORSACK-Cross

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Q Now, did you at one point make up your mind that you would get him a pistol; is that right?

A After he pursued the issue, I said I would not make up my mind, I would inquire, I believe I testified to the fact I would inquire if there was availability.

THE COURT: Wait a minute, you felt you had to inquire, you had that gun the first one you sold him, in your possession?

A I did not, your Honor. I beg your pardon.

THE COURT: I thought you had one gun you bought in Vermont in 1967?

A Yes.

THE COURT: You had that gun available?

A That wasn't available at the time, I hadn't even thought about that yet.

THE COURT: But it was there, wasn't it, in your possession?

A No, not in my immediate possession, your Honor.

THE COURT: Where was it?

A It was stored away.

THE COURT: But you had it?

A Yes.

THE COURT: It belonged to you?

A Yes, it belonged to me.

14a

FORSACK-Cross

1
2 THE COURT: And so, it wasn't a question of inquiring,
3 you had a gun that you could have sold him?

4 A Yes, if you want to --

5 THE COURT: Yes.

6 Q In fact, didn't you have 46 guns that you could have
7 sold him?

8 A Yes, absolutely.

9 Q Did Mr. Wilson tell you what kind of a gun he wanted?

10 A Something small that he can keep in his pocket,
11 something that he could keep concealed on his person. Nothing
12 big, he said.

13 Q Nothing big?

14 A Yes.

15 Q He wanted to conceal it?

16 A Conceal it in his pocket.

17 Q Okay. Now, does the Floral Park Sporting Goods
18 store sell small handguns?

19 A I don't know what they carry in stock. I would
20 assume they're available. I really don't know what they carry
21 in stock.

22 Q Didn't you testify, that you ordered some .32's or
23 some .22's from the Floral Park Sporting Goods store?

24 A I don't believe I testified to that, I don't under-
25 stand what you are talking about. I ordered some .32 ammunition

FORSACK-Cross

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Guns, or what are you talking about?

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Q What kind of guns, didn't you testify previously or wasn't there testimony elicited that the Floral Park Sporting Goods store did sell .22 caliber guns?

6

A Not to my knowledge.

7

8

9

Q Well, did Mr. Wilson, in the course of your business of working in the Sporting Goods store, know salesman of firearms?

10

A I still don't understand your question, I'm sorry.

11

Q Let me rephrase it.

12

A Yes.

13

Q Now, Mr. Wilson worked in Floral Park Sporting Goods?

14

A Yes, he did.

15

16

Q And in the course of working in that store, did he have occasion to meet salesmen of firearms?

17

MR. KOHN: Your Honor, I object, respectfully object.

18

THE COURT: Overruled.

19

A Did he have --

20

MR. KOHN: It calls for the conclusion of what he knows, what somebody else knew.

21

22

THE COURT: Apparently, he knows what Mr. Wilson's moves were, I'll let him testify to his knowledge.

23

24

25

Q Didn't you just testify that Mr. Wilson said he had to buy off a salesman or something to that effect?

1 FORSACK-Cross

2 A No, I didn't say that.

3 Q Well, do you think that --

4 THE COURT: Wait a minute. Didn't you just finish
5 telling us a moment ago, that he had to pay off a salesman
6 to get you certain things that you wanted?

7 A Your Honor, she inferred if I was ever threatened?

8 THE COURT: No, no, just go back a moment ago.
9 There was a discussion of favors that Mr. Wilson had done
10 for you and one of the favors was; he paid off some salesman
11 to get you some special guns; isn't that right?

12 A No, I don't think that's right. I don't think that
13 was right at all, your Honor. If that's the way you got it's --

14 THE COURT: Who did he pay off?

15 A He knew salesmen that came into his store, salesmen
16 came into every store.

17 THE COURT: But, you said he did something moral or
18 illegally improper on your behalf to obtain special guns for
19 you; isn't that right?

20 A Yes, all right, now I understand what you mean.

21 THE COURT: And didn't he pay some salesman to get
22 those guns?

23 A Yes.

24 THE COURT: So, he knew salesmen and he dealt with
25 salesmen?

FORSACK-Cross

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A Yes.

THE COURT: And that was the question?

A Okay, I'm sorry, I really didn't understand it.

Q Now, when you agreed to provide a pistol to Mr. Wilson, of course, the thing that you did was to go into the Sporting Goods store and with pistols available, pick one out at that point, and say to Mr. Wilson, now which of these many pistols in your store would you like me to buy, and then give it to you; is that the way he did it, right?

A I still don't understand your question, I really don't.

Q Well, I'm not trying to confuse you?

A I think you are trying to confuse me.

Q I am merely trying to find out what was going on at the time. Now, Mr. Wilson worked in the store where handguns are sold; isn't that correct?

A Yes.

Q He had access to salesmen that sold all types of guns; didn't he?

A Yes, he did.

Q And now, he's coming to you and asking you to supply him a pistol?

A Yes.

Q He didn't describe to you anything more about what

18a

FORSACK-Cross

1
2 he wanted then, a general description of something small; is
3 that right?

4 A Not other than that, he didn't.

5 Q Now, you were supposed to give him a gun because he
6 couldn't get one for himself; is that right?

7 A He asked me to pick him up a gun for him, personally.

8 Q Now, you were legally able to purchase guns?

9 A Yes.

10 Q I'm asking you, did you, in order to obtain a gun,
11 which Mr. Wilson wanted, go into the store where he worked and
12 buy the gun in that store?

13 A No.

14 Q Where did you get that gun?

15 A Schenectady, New York.

16 Q Mr. Forsack, you are telling us that you went all the
17 way Upstate to purchase a gun, when a block or two from where
18 you worked, was a whole store full of them?

19 A I was scheduled to go to a gun show in the early part
20 of September in Schenectady, I testified to that. And I had
21 made arrangements to go there already and participate.

22 Q That's where you decided that you would buy the gun?

23 A I didn't decide, I just went up to there to participate
24 and look around.

25 Q Now, whom did you buy the gun from at that time?

19a
FORSACK-Cross

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2

A Who did I buy it from?

3

A Yes.

4

Q Victor Accedeno, I think his name was.

5

Q What kind of gun was that, the first one?

6

A Savage .32 semi-automatic, Model of 1917.

7

Q Now, when you bought that gun from Accedeno, did

8

you fill out any forms?

9

A Did I fill out, what sort of forms?

10

Q Federal forms to purchase --

11

A A yellow sheet?

12

Q Any form at all?

13

A I might have.

14

Q You don't recall?

15

A I don't recall.

16

Q Do you remember talking to Agent Rogers on October 28,

17

1976?

18

A Yes, the day after I was arrested?

19

Q Yes?

20

A Yes.

21

Q Do you remember talking to him about how you acquired

22

the firearm in question, at that time?

23

A Yes, I told him I bought it in Schenectady, New York.

24

Q And, do you remember telling him, at that time, when

25

FORSACK-Cross

1

2 you bought the Savage?

3 A When I bought it?

4 Q Yes?

5 A Yes, I said I bought it the early part of September,
6 1976 in Schenectady, New York.7 Q Well, do you remember that Agent Rogers testified
8 about that statement also?

9 A I don't recall his testimony.

10 Q Do you recall that he did testify?

11 A I recall he testified, he was on the stand almost
12 all morning.13 Q And do you recall that he testified that you told
14 him, at the time, on October 28 that is, that you purchased
15 that Savage from Mr. Accedeno, that you just testified about
16 in Syracuse and in 1974?17 A Yes, I recall his testimony, and that's not true, I
18 didn't say that.

19 Q You never told him that?

20 A Never, never.

21 Q Do you recall that he told you -- withdrawn.

22 Do you recall his testimony that you told him on
23 October 28, that you bought these Savages without filling out
24 Federal firearms records, or executing Federal Form 4473?

25 MR. KOHN: Objection. That's not what was testified,

FORSACK-Cross

1
2 your Honor.

3 THE COURT: It's the Jury's recollection to control,
4 but I'll allow the question.

5 A Did I tell him that I filled out a Federal Form?

6 THE COURT: That you had not?

7 A That I had not filled out a Federal Form?

8 Q My question is, do you recall his testimony to
9 that effect?

10 A No.

11 Q Did you tell him that?

12 A No.

13 Q Now, if I tell you that, that was indeed his testimony?

14 A That's possible, I didn't listen to all of his testi-
15 mony; that's possible.

16 Q It's possible he said that. If he said it, would it
17 have been the truth?

18 A If he had said it, would it have been the truth, I
19 just answered, no.

20 Q So, he was lying?

21 A Lying, that's what you said, I didn't say that.

22 Q You testified that the first time you met with
23 Tony -- withdrawn.

24 You testified that you did take the gun to Kenny and
25 you gave it to him?

FORSACK-Cross

1
2 A You'll have to repeat the first part of your question.

3 Q You testified that after you acquired the Savage up
4 in Upstate, New York, you came back down, and went over to
5 the store and gave it to Kenny; is that right?

6 A Yes.

7 Q Did you give him a bill of sale?

8 A A bill of sale?

9 Q Yes?

10 A No.

11 Q Did you ask him to fill out any forms, Federal,
12 State or otherwise?

13 A No, I'm not required to do that.

14 Q Okay. Now, you did meet Tony on September 29, 1976;
15 is that right?

16 A Yes, with Kenny Wilson.

17 Q By the way, what is your status in the store?

18 A My status?

19 Q Yes, are you an employee, an owner?

20 A No, I work there occasionally, I, I have been
21 disabled from the Fire Department for 13 months and I have a
22 large family, so I had to take a part time job, something I can
23 sit down and take it easy, so I work there one day a week.

24 Q Now, when Tony came in, he was with Ken; is that right?

25 A Yes.

23a

FORSACK-Cross

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Q And you testified yesterday, Kenny told you he was
a cab driver?

A Yes.

Q And then you started talking about guns; is that right?

A We started talking about guns?

Q Yes?

A No, we started talking about cabs.

Q You did?

A Yes.

Q Did you ask to see his hack license?

A Hack license?

Q Yes?

A No, why should I ask to see his hack license?

Q Now, you took him to the backroom; isn't that correct?

A I took him to the backroom?

Q Yes, there came a time during this meeting, that you
took him to the backroom of the liquor store, the office?

A I took him to my office, yes.

Q Okay. Now, did you show him the .22 at that time?

A No.

Q Did you show him the .32, the Lama?

A No.

Q You showed him no guns at that time?

A No.

FORSACK-Cross

1

Q What did you show him?

2

A I went out to my car, at that time, and got a .22

3

Lama and showed it to him.

4

Q Okay. And where did you show it to him?

5

A In my office.

6

Q And was Kenny present then?

7

A Yes, he was.

8

Q But Tony came in to buy the gun?

9

A He was going to buy the gun?

10

Q Yes?

11

A He didn't say so?

12

Q Who paid you for the gun, at that time?

13

A Who paid me for the gun?

14

Q Who gave you the money?

15

A Kenny did, after he got it from Tony.

16

Q Tony gave Ken the money?

17

A Well, I asked Kenny, at that time, in the course of

18

conversation, "Didn't you ask me to bring the Lama .22 for you,

19

a co-worker in your store?" and he said he wasn't interested

20

and now the friend of his, Tony, a cab driver, I think I testi-

21

fied to this, he would like to see it. That's the reason he

22

was there.

23

Q Now, but the gun was bought and paid for, at that time?

24

A Yes. I gave Kenny the gun, he gave me the money.

25

FORSACK-Cross

1
2 Q You gave Kenny the gun and not Tony?

3 A No, I gave it to Kenny, it was in his hands when
4 Kenny gave me the money, and he gave it to Tony.

5 Q Did you give Tony a bill of sale, at that time?

6 A I'm not required to.

7 Q Did you fill out any forms?

8 A Did I what?

9 Q Did you fill out any State or Federal Forms?

10 A No, I'm not required to.

11 Q Did you ask Tony if he had any purchase orders?

12 A Purchase orders?

13 Q Yes?

14 A No, I didn't ask him that.

15 Q Did you ask him if he had a license to carry the gun?

16 A No, I didn't, I didn't ask him that.

17 Q Did you ask him if he had a collector's license?

18 A A collector's license?

19 Q Yes?

20 A I don't recall that.

21 Q Did you ask him what he wanted the gun for?

22 A Yes.

23 Q And what did he say?

24 A He's a cab driver in the City of New York and he
25 wanted to protect himself with it.

FORSACK-Cross

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2 Q I see. Did you tell him that he could take the
3 serial number off it by grinding it down?

4 A No, never.

5 Q Do you recall that Tony testified you told him that?

6 A Yes.

7 Q And that never happened?

8 A I never said that.

9 Q So the agent was lying?

10 A Lying, you said he was lying, I said he's grossly
11 mistaken.

12 Q Grossly mistaken?

13 A Grossly mistaken.

14 Q Did you hear any testimony that he bought two guns
15 and not one gun?

16 A Yes, I did.

17 Q And that's mistaken also?

18 A No, that's lying.

19 Q That's lying?

20 A That's lying.

21 Q Okay. Did Tony threaten you on this occasion?

22 A Threaten me?

23 Q Yes?

24 A Why should he threaten me?

25 Q Did he bribe you?

FORSACK-Cross

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A Yes.

Q With what?

A A hundred dollars.

Q Which you thought was a fair value of the gun?

A Considering it was worth 125 dollars, I did.

Q And that is what you consider a bribe?

A A bribe?

Q Yes?

A Well, in view of one thing, I gave him one thing and he gave me the money, what would you call it?

Q Mr. Forsack, it is not I who is here to answer questions.

A You're asking the questions, ma'am.

Q Are you familiar with the term, unregistered?

A No.

Q You never had a conversation about that?

A No.

Q Are you familiar with the term, grab bag?

A I beg your pardon?

Q Are you familiar with the term, grab bag?

A No.

Q Now, you testified that you go to gun shows; is that right?

A Yes.

28a

FORSACK-Cross

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Q And what do you do at the gun shows?

3

A What do I do?

4

Q Yes?

5

A Talk, look around, display collector's guns, meet

6

other collectors.

7

Q Find out what's happening, generally in the gun

8

business?

9

A In the gun business?

10

Q Yes?

11

A I'm not in the gun business, I'm a collector.

12

Q Well, do you talk to other people about what kind

13

of guns are on the market and available?

14

A Sometimes.

15

Q And does there come a time, or has there ever come a

16

time, when somebody has offered to you a bag full of guns?

17

A A bag full of guns, what kind of bag?

18

Q For a certain amount of money?

19

A What kind of bag?

20

Q I'm just asking you a question, did that ever happen?

21

A No.

22

Q During the course of your visit to these shows, did

23

you ever overhear anything or did any knowledge come to you,

24

like the people who illegally transferred guns?

25

Q To my knowledge? Not to my knowledge.

FORSACK-Cross

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Q Now, the second time that you sold the guns to Tony, you sold two on the second occasion you met him; is that correct?

A Would that be the Savage .32 automatic and the Harrington & Richardson topbreak revolver?

Q As you recall, did you sell two guns; didn't you on October 6th?

A October 6th?

Q Yes?

A Yes.

Q Now, did Tony come into the store with Nick on that occasion?

A Yes, he did.

Q And he asked you if you had some guns for him?

A Yes, he did.

Q And did you get the guns?

A No.

Q You didn't get the guns?

A No.

Q On October 6th, you didn't have the guns?

A October 6th?

Q Yes, that's the first time that Nick came into the store with Tony.

A No, I didn't get the guns.

Q But you did sell them the two guns?

30a

FORSACK-Cross

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A No, he didn't say that at the time. They came into the store, you asked me, and they asked me for the guns, no I didn't get them the guns.

Q Well, did there come a time during that meeting that you did get the guns?

A Yes, after I tried to get in touch with Kenny Wilson to ask him what was happening here?

Q Okay.

A May I finish?

Q Certainly.

A And Tony told me when he came in with Nick, it was okay, that Kenny Wilson couldn't come down as we had arranged, he came in his place and Kenny had told him to come down and speak to me, is that what you want to know?

Q I just want to know what the truth is, Mr. Forsack?

A I have been telling the truth ever since I swore that I would.

Q Fine. Now, there did come a time when you sold the guns to Tony that day; is that right?

A I transferred it to him, right.

THE COURT: You keep saying transferred to him, he gave you money and you gave him a gun?

A Yes. Sold, if that --

THE COURT: Don't you think that constitutes a sale?

31a

FORSACK-Cross

1
2 A Yes, I sold them to him for 75 dollars.

3 Q And, of course, when you agreed to sell the guns,
4 you just had the guns in the back and brought them right out
5 in the liquor store, and gave them to him right over the counter
6 in full view of everybody; right?

7 A No.

8 Q Did you have a conversation with Tony and Nick on
9 that day about unlicensed guns?

10 A Unlicensed guns?

11 Q Yes?

12 A No, not that I recall.

13 Q Do you recall having a conversation about being able
14 to get guns cheaper if you have a license?

15 A Cheaper?

16 Q Yes?

17 A That's not true, it's just the opposite, they're
18 more expensive if you do have a license.

19 Q So that when Agent Rondello testified that you did
20 have a conversation about the price of guns, if you have a
21 license versus not having a license, that never happened?

22 A No, Agent Galgano testified that, it didn't happen.
23 He said there was no conversation, I believe in his testimony.
24 He said, there was no conversation at all.

25 THE COURT: That isn't the question. The question

FORSACK-Cross

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is, what your recollection is?

3

A No. Not to my recollection.

4

5

THE COURT: Now, you said no such conversation ever occurred?

6

A No, sir.

7

Q Did you ask Tony for a purchase order at that time?

8

A Purchase order?

9

Q Yes?

10

A No, I wasn't required to.

11

Q Well, didn't you testify -- withdrawn.

12

13

14

15

Do you recall testifying yesterday, that when you first met with Agent Rondello in the store, you told him that you would give him the gun or sell him the gun, or transfer the gun to him, just as a favor to Kenny?

16

17

A The first time that Kenny Wilson was present and Agent Rondello was present?

18

Q Right and you said --

19

A In the sale of the .22 Lama?

20

Q The first time any sale took place?

21

A The sale of the .22 Lama, yes.

22

23

Q Yes. And you told him that you were doing this as a favor?

24

25

A Absolutely, and in fact, Kenny was supposed to have met me there to purchase the gun itself, I had never met Agent

FORSACK-Cross

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2 Rondello before that time.

3 Q Okay. Now, you testified and this is my recollection
4 to the words you used, you say that you usually don't do any-
5 think like that because you have a license to protect; do you
6 recall using that word; usually?

7 A No, I don't recall that.

8 Q Well, have you every sold guns before?

9 A Have I ever sold guns, I have been --

10 Q To people other than dealers or collectors who are
11 licensed?

12 A Have I ever sold guns before other than dealers and
13 collectors that are licensed?

14 Q Have you ever?

15 A Never.

16 Q Never?

17 A Never.

18 Q And you don't recall that you used that word, usually?

19 A No, I don't recall that.

20 Q But you recall being concerned that you did have a
21 license to protect?

22 A Protect?

23 Q Yes, do you recall using that phrase?

24 A From the day it was issued, it was my responsibility
25 to protect that license.

FORSACK-Cross

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Q Now, you testified also, that at one point, Agent Rondello said, the 357 Magnum that I'd like to buy it, and you said, if you have a license, you can get it; is that your testimony?

A Was that my personal Smith & Wesson 357 Magnum?

Q Yes?

A Yes.

Q So, at that point, you told him, he needed a license to purchase that gun; right?

A I don't recall that, that I said he needed a license to purchase that gun.

Q Do you recall telling him that he could get it if he had a license?

A You can get anything if you have a license.

Q Do you recall Agent Rondello and Galgano testifying that on October 6th, they asked you if you could supply .22's, .38's and .32 guns?

A Guns?

Q Yes?

A Do I recall it?

Q When I say the numbers, .22, .38, .32, obviously, I'm referring to caliber.

A Yes, but ammunition or guns?

Q Guns.

35a

FORSACK-Cross

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THE COURT: Guns.

3

A Guns, yes.

4

5

Q Did you, in fact, tell them you could get them as many .22's as they wanted?

6

A I never said that.

7

8

Q As many .22's, short caliber revolvers, short barrel, I'm sorry, revolvers; you never said that?

9

A I never said that.

10

11

Q And you never said that you could get the .32 Harrington & Richardsons?

12

A .32 Harrington & Richardsons?

13

Q Yes?

14

A No, I never said that either.

15

Q You never offered to get them as many as they wanted?

16

A Never.

17

18

Q Did you tell them that if they were agents, you'd blow them away?

19

A I never said that.

20

21

Q Did you tell that to Tony and Kenny on the first day they came to the store?

22

23

A Why would I say that to my friend, Ken, and his friend; I never said that either.

24

Q You never said, "I'd blow them away?"

25

A Absolutely not, why would I say that?

FORSACK-Cross

1
2 Q So, when the agents testified to that then, they
3 were lying; is that right?

4 A Lying, yes they were.

5 Q Now, on October 14th, when you sold the Colt .45 to
6 Tony --

7 A Yes?

8 Q -- did you ask him for papers on that occasion?

9 A What sort of papers?

10 Q Did you ask him if he had a purchase order?

11 A I'm not required to ask.

12 Q Did you ask him to fill out any Federal forms?

13 A I'm not required to ask that either.

14 THE COURT: You can sell a Colt .45 to anybody?

15 A As a casual sale, I can sell it to anybody or buy it
16 from anybody, your Honor.

17 THE COURT: Is this a casual sale, the 3rd time
18 around in your mind?

19 A The casual sale of my personal property.

20 THE COURT: No, listen to me for a minute. The 3rd
21 time around, you sold to this man, Tony; is that right?

22 A The 3rd time?

23 THE COURT: September 29, you sold him a gun?

24 A I sold the gun to Kenny Wilson.

25 THE COURT: You said he hands it to Tony.

FORSACK-Cross

1
2 A Right.

3 THE COURT: And you saw the money come from Tony?

4 A Yes, I did.

5 THE COURT: And you sold two guns on October the 5th?

6 A Yes, I did.

7 THE COURT: And now you are up to a .45 on October
8 the 14th?

9 A Yes.

10 THE COURT: And they're still casually selling in
11 your mind?

12 A Casual sales of personal property. How else can I
13 explain it?

14 THE COURT: Is that the way you regard it?

15 A That's the way I regard it.

16 THE COURT: All right.

17 Q Now, but there was no question in your mind, that
18 you actually were selling guns; is there?

19 A Selling guns?

20 Q You knew that what you were selling was guns as
21 opposed --

22 A I know what it was, it's obvious, it was a gun, it
23 looks like a gun.

24 Q You didn't think it was a water pistol?

25 A Did I think that?

FORSACK-Cross

1
2 Q Yes?

3 A I don't think I'm that naive?

4 Q Certainly not. Where did you get the Colt .45 that
5 you sold Tony that day?

6 A Syracuse, New York.

7 Q And when?

8 A Second or third of October, Saturday and Sunday, the
9 Syracuse Show.

10 Q And how did you acquire that gun?

11 A I bought it.

12 Q From whom?

13 A From whom?

14 Q Yes, can you recall?

15 A No, I really don't recall for the simple reason I
16 bought, I didn't ask the fellow's name, it was offered for sale
17 and I bought it.

18 THE COURT: Did you get a bill of sale for that gun?

19 A No I didn't, your Honor. I didn't get a bill of
20 sale, unfortunately.

21 THE COURT: Okay. You don't have a bill of sale for
22 any of the guns; do you?

23 A Yes, I do, your Honor.

24 THE COURT: Which ones?

25 A The Lama .22.

FORSACK-Cross

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THE COURT: That's the only one?

3

A Yes, sir.

4

5

THE COURT: All the others, you don't have a bill of sale?

6

A No, your Honor, it's not required on a bill of sale.

7

THE COURT: I see.

8

A May I add something?

9

THE COURT: No. No questions.

10

Q Did you buy the Colt .45 from a licensed dealer?

11

12

A He may have been, I don't know. I don't even know his name so it could have been a licensed dealer.

13

Q Did you ask you for any papers at that time?

14

A I beg your pardon?

15

Q Did he ask you for any documentation, at that time?

16

A From me?

17

Q Yes?

18

A Not that I recall.

19

20

21

22

Q Do you recall, again bringing your attention back to October 28, when you met with Agent Rogers and you discussed where you acquired these guns, do you recall telling him where you got the Lama?

23

A The Lama?

24

Q Yes? .

25

A Yes.

FORSACK-Cross

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Q And you told him that you got it in Vermont, in '67?

A No, I don't think I said, 1967. I got it before the '68 G.C.A. was passed, I think '67 or '68.

Q Do you recall stating that this firearm was legally purchased by you?

A Legally purchased by me, it was.

Q Okay. Do you remember -- withdrawn.

Do you have keys to the liquor store where you work?

A Presently?

Q Well, during the time in question, September, October of '76?

A Yes, I had a key for the front door.

Q Now, you testified that on the evening of October 14th, you met Tony in the Village Inn, and where was your car parked, again?

A Directly across the street from the Village Inn.

Q And Tony's car was parked in the back of the Floral Park --

A In back of Floral Park Sporting Goods, there's a Municipal Parking lot there, that's where he had parked. He had a brown --

Q How far --

A Excuse me?

Q Continue, please.

FORSACK-Cross

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A That's all I have to say.

Q How far from the Village Inn is the liquor store?

A Diagonally across the street, 50 feet, 60 feet.

Q And you had the keys to the store at that time?

A Did I have keys to the store?

Q Yes, the liquor store?

A On my possession?

Q Yes?

A No.

Q You didn't?

A No.

Q Had you worked there that day?

A No.

Q Now, you said that when you sold the gun for 200 dollars, you raised the price 25 dollars because 25 was to be for Kenny?

A Yes.

Q Did he ask you to do that?

A Did he ask me to do that?

Q Yes?

A He wanted some, he wanted some money out of these transactions.

Q He asked you for money?

A Yes. I wanted my 175 and he wanted something for

42a

FORSACK-Cross

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himself.

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THE COURT: I don't know that I quite follow that?
I thought you were buying, he wanted this gun, the .45, he
wanted to buy it?

6

A He wanted it, for himself.

7

THE COURT: And then he reneged on the purchase?

8

9

A He didn't have the money at the time, not that he
didn't want to buy, he didn't have the money.

10

11

12

THE COURT: And so, not having the money and reneged
on the purchase, and then he felt he was entitled to 25
dollars?

13

14

A Your Honor, he didn't renege on the purchase, I
reneged on the purchase because he didn't have the 175.

15

16

THE COURT: Well, that's a reason, he reneged because
he didn't produce the money; is that right?

17

A I reneged because I wouldn't give him the gun.

18

19

THE COURT: I see, all right. You would have sold
it to him if he had the 175?

20

21

A I would have given it to him. I asked, as I testified
before, go to the cash register and again hit it for 175.

22

23

THE COURT: You would have told him to take the
money?

24

A Yes.

25

THE COURT: So, it was he who reneged?

FORSACK-Cross

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2 A He reneged?

3 THE COURT: Yes, because he didn't give you the 175.

4 A If I would have given him the gun and come back
5 with 175, he would have taken it.

6 THE COURT: That's because he didn't have the money.

7 A Yes.

8 Q If he had actually had the 175, and you sold him the
9 gun for the 175, would you have given him a 25 dollar rebate?

10 A How do I do that? I paid 175 dollars for the gun,
11 I don't mind doing favors, but I don't want to take a loss on it.

12 Q But, you sold it to his friend and you are going to
13 give him 25, okay?

14 A Why not, he was entitled to it.

15 Q As a commission?

16 A As a commission, not as a commission, as a fee, as a,
17 just a gift of 25 dollars to him. I thought it would be the
18 right thing to do because of past favors for me.

19 THE COURT: Did you write out a check for the 25
20 dollars and give it to him?

21 A Did I write out a check for 25 dollars?

22 THE COURT: Yes?

23 A No, I didn't write out a check for 25 dollars, your
24 Honor.

25 THE COURT: All right.

FORSACK-Cross

1
2 Q Now, each time you were paid, you were paid -- did
3 you take Master Charge?

4 A I beg your pardon?

5 MR. KOHN: Objection.

6 MISS SCHWARTZ: I'll withdraw the question, your
7 Honor.

8 Q Now, did you ever offer to the agent, an M2?

9 A M2?

10 Q Carbine?

11 A Rifle?

12 Q An automatic?

13 A Never, absolutely not. Absolutely.

14 Q Did you ever offer to get them a machine gun?

15 A A machine gun?

16 Q Yes?

17 A Where would I get a machine gun from, never.

18 Q My question --

19 A Never.

20 Q -- Not where you would get one?

21 A Never did.

22 Q You never did.

23 A Never.

24 Q Did you ever tell them that you had a connection down
25 South that you were working on?

(MORNING SESSION)

THE COURT: Good morning. Seat the jury.

(Jury seated in courtroom.)

THE COURT: Now, ladies and gentlemen, I'm going to give you the instructions on the law. It's my practice to read the instructions to you. I realize it makes it somewhat difficult for you to follow than it would be if I gave them to you extemporaneously. On the other hand, it does minimize the risk of error when I read them, and I think that's very important.

Generally speaking, the charge is divided into, I suppose, what you might call four parts. First is some general instructions. Then I discuss with you the indictment, and then I discuss with you some instructions on how to treat certain of the evidence, and then, finally, I end up by giving you some general instructions on how you perform your function as jurors. I will not stop and say when we come to one part or the other, but I think you'll recognize the parts they touch upon.

Now that you have heard the evidence and the arguments, it becomes my duty to give you the instructions of the Court as to the law applicable to this case. It is your duty as jurors to follow the law

as stated in the instructions of the Court and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty as judges of the fact to base a verdict upon anything but the evidence in the case.

You must not permit yourself to be governed by sympathy, bias, prejudice or any other consideration not founded on evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors, and to arrive at a verdict by applying the same rules of law as

given in these instructions of the Court.

Now you have been chosen and sworn as jurors in this case to try the issues of the facts presented by the allegations of the indictment and the denial made by the "not guilty" plea of the accused. You are to perform this duty without bias or prejudice as to any party. Again, the law does not permit jurors to be governed by sympathy, prejudice or public opinion.

Both the accused and public expect you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court and reach a just verdict, regardless of the consequences.

Now, I am not going to send the exhibits which have been received in evidence with you as you retire for your deliberations. You are entitled, however, to see any or all of the exhibits as you consider your verdict.

I suggest that you begin your deliberations and then if it would be helpful to you, you may ask for any or all of the exhibits simply by sending a note to me through one of the deputy marshals who will be stationed outside your jury room door.

Now as far as the reading back of any testimony of any particular witness is concerned, if you find after you have given all of the evidence a fair consideration that you have reached an impasse with respect to any particular witness, a part of any particular witness' testimony, you may request a part of such witness' testimony reread. However, I caution you not to do this until you have considered all of the evidence as a whole. Just like you are required to consider all of these instructions as a whole, so also you should view the evidence in the case as a whole and not ask for a particular part read back, because all that would do is highlight that particular part in each of your minds and it may warp your views as to the evidence as a whole. That doesn't say you can't have it read back, you may, but you should try to consider the evidence as a whole at least for the first instance.

An indictment is but a form or method of accusing a defendant of a crime. It is not evidence of any kind against the accused.

There are two types of evidence from which a jury may properly find a defendant guilty of a crime. One is direct evidence, such as the testimony of an

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2 eye witness. The other is circumstantial evidence,
3 i.e., the proof of facts and circumstances which
4 rationally imply the existence or non-existence of
5 other facts, because such other facts usually follow
6 according to the common experience of mankind. By
7 way of example, the footprints of a man in the sand
8 implied to Robinson Crusoe that there was another
9 man with him on the desert island, and indeed there
10 was, the man Friday.

11 Thus, on the one hand you may have direct
12 evidence of an issue and, on the other hand, you may
13 have circumstantial evidence of an issue. The law
14 does not hold that one type of evidence is necessarily
15 of a better quality than the other. The law requires
16 only that the Government prove its case beyond a
17 reasonable doubt, both on the direct and circumstantial
18 evidence.

19 At times a jury may feel the circumstantial
20 evidence is of better quality. At other times they
21 may feel the direct evidence is of better quality.
22 That judgment is left entirely up to you.

23 As a general rule, the law makes no distinction
24 between direct and circumstantial evidence, but,
25 simply requires before convicting a defendant, the

1
2 jury be satisfied of the defendant's guilt beyond a
3 reasonable doubt from all of the evidence in the
4 case.

5 The law presumes a defendant to be innocent
6 of crime. Thus, a defendant although accused, begins
7 a trial with a clean slate, with no evidence against
8 him, and the law permits nothing but legal evidence
9 presented before the jury to be considered in support
10 of any charges against the accused.

11 So, the presumption of innocence alone is
12 sufficient to acquit the defendant unless the jury
13 is satisfied beyond a reasonable doubt of the
14 defendant's guilt after careful and impartial consid-
15 eration of all of the evidence in the case. The
16 burden is always upon the prosecution to prove guilt
17 beyond a reasonable doubt. This burden never shifts
18 to the defendant, for the law never imposes upon a
19 defendant in a criminal case the burden or duty of
20 calling any witnesses or producing any evidence.

21 A reasonable doubt does not mean a doubt
22 arbitrarily and capriciously asserted by the juror
23 because of his or her reluctance to perform an
24 unpleasant task. It does not mean a doubt arising
25 from a natural sympathy for others. It is not

1 9
2 necessary for the Government to prove the guilt
3 of a defendant beyond all possible doubt. If that
4 were the rule, very few people could ever be convicted
5 of anything. It is practically impossible for a
6 person to be absolutely sure and convinced of any
7 controverted fact which, by its nature, is not
8 susceptible to mathematical certainty. In conse-
9 quence, the law says a doubt should be reasonable
10 doubt and not a possible doubt.

11 A reasonable doubt is a doubt based upon
12 reason and common sense, the kind of doubt that would
13 make a reasonable person hesitate to act. Proof
14 beyond a reasonable doubt must, therefore, be proof
15 of such a convincing character that you would be
16 willing to rely and act upon it unhesitatingly in
17 the most important of your own affairs.

18 The jury will remember that the defendant is
19 never to be convicted on mere suspicion or conjecture.
20 Again, a reasonable doubt means doubt that is based
21 on reason and must be sufficient to cause a prudent
22 person to hesitate to act in the most important
23 affairs of his or her life.

24 The requirement of proof beyond a reasonable
25 doubt operates on the whole case and not on the

1
2 separate bits of evidence. Each individual item of
3 evidence need not be proven beyond a reasonable
4 doubt.

5 Now, it is charged in the indictment that
6 from on or about the 29th day of September, 1976,
7 to and including the 14th day of October, 1976, both
8 dates being approximate and inclusive, within the
9 Eastern District of New York, the defendant, Stanley
10 Forsack, who was not then and there a licensed
11 importer, a licensed manufacturer or licensed
12 dealer, did knowingly, intentionally and unlawfully
13 engage in the business of dealing in firearms, in
14 violation of Title 18, United States Code Section
15 922A1.

16 That section of the Code provides, in
17 pertinent part,, "That it shall be unlawful for any
18 person, except a licensed importer, licensed manu-
19 facturer or licensed dealer to engage in the business
20 of importing, manufacturing or dealing in firearms
21 or ammunition."

22 The following are the essential elements of
23 the crime which the Government must prove beyond
24 a reasonable doubt in order to establish the offense
25 charged in the indictment.

53a
Charge

11

1
2 Number one. That the defendant was engaged
3 in the business of dealing in firearms.

4 Number two. That the defendant did not have
5 a Federal firearms license as an importer, manufac-
6 turer or dealer.

7 Number three. That the defendant acted
8 knowingly.

9 An act is done knowingly if done voluntarily
10 and intentionally and not because of mistake,
11 accident or any other innocent reason. The purpose
12 of adding the word "knowingly" was to insure that
13 no one would be convicted of an act done because of
14 mistake, accident or other innocent reason.

15 The Government does not have to prove as an
16 element of the crime of unlicensed dealing in
17 firearms that the defendant knew that he was violating
18 Federal law. The statute does not require that the
19 Government establish as an element of the crime that
20 a person charged with unlicensed dealing knew of the
21 law.

22 A dealer is defined as, "any person engaging
23 in the business of distributing firearms at wholesale
24 or retail."

25 The term, "firearms", is defined as "any

V Charge

1
2 weapon which will, or is designed to, or may readily
3 be converted to expel a projectile by the action of
4 an explosive, the frame or receiver of any such
5 weapon, any firearm muffler or any firearm silencer,
6 or any destructive device. Such a term does not
7 include an antique firearm."

8 On the one hand, the defendant claims by way
9 of defense to the charge in the indictment that he
10 was not in the business of dealing in firearms.
11 The Government, of course, points to the testimony
12 with respect to the sale of the five guns on three
13 or four occasions to Kenneth Wilson and the agents,
14 and the statements to the effect that he could get
15 more and so forth, to which the Government says
16 proves to the contrary.

17 A person is engaged in the business of dealing
18 in firearms if he either has firearms on hand or is
19 ready and able to procure them and sell them to such
20 persons as might accept them as customers.

21 Dealing or business activity is that which
22 occupies time and attention and effort, but the law
23 does not require that the dealing or business activity
24 be the defendant's primary business or activity, or
25 that it be on a profit making basis. Nor is it

Charge

1
2 necessary that selling firearms be of any significant
3 source of income for the defendant.

4 The use of the term "wholesale" or "retail"
5 does not necessarily have the connotation of an open
6 business. It can be clandestine and somewhat
7 sporadic. No minimum number of sales must be shown,
8 and while one sale alone may not be sufficient to
9 evidence that a person was dealing in firearms, one
10 sale together with other facts, circumstances,
11 conversations and holding oneself out might be
12 sufficient to prove the existence of a business.

13 In deciding whether or not the defendant
14 dealt in firearms you must consider whether the
15 defendant was cognizant of what he was selling and
16 use your common sense to determine whether or not
17 his dealings were unlawful. Moreover, dealing in
18 firearms intrastate is proscribed by law. You need
19 not find that the defendant made intrastate
20 sales.

21 Then again, on the other hand the defendant
22 claims by way of defense to the indictment, that
23 assuming he was engaged in the business of dealing
24 in firearms, then he was entrapped into the same by
25 agents of the Government. Again, the Government

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2 says the testimony shows that he was known to the
3 FBI to be "in guns" prior to their investigation,
4 and that he was ready, willing and able to make
5 the sales to Mr. Wilson and the agent when offered
6 the opportunity.

7 Where a person has no previous intent or
8 purpose to violate the law but is induced or persuaded
9 by law enforcement officers, or their agents to
10 commit a crime, he is a victim of entrapment and the
11 law as a matter of policy forbids his conviction
12 in such cases. On the other hand, where a person
13 already has the readiness and willingness to break
14 the law, the mere fact that the Government agent
15 provides what appeared to be a favorable opportunity
16 is not entrapment.

17 For example, when the Government suspects that
18 a person is engaged in the alleged sale of firearms,
19 it is not entrapment for a Government agent to
20 pretend to be someone else and to offer, either
21 directly or through an informer, or a decoy, to buy
22 firearms from the suspected person.

23 If then the jury should find beyond a reasonable
24 doubt from the evidence in the case that before anything
25 at all occurred with respect to the alleged offense

involved in the case, the defendant was willing, ready and able to commit crimes such as is charged in the indictment whenever an opportunity was afforded, and that the Government officers or their agents did not more than offer the opportunity, then the jury should find that the defendant was not a victim of entrapment.

On the other hand, if the evidence in the case should leave you with a reasonable doubt whether the defendant had the previous intent or purpose to commit an offense of the character charged apart from the inducement and persuasion of some officer or agent of the Government, it is then your duty to find him not guilty.

Two questions of fact arise. One, did the agent or informer induce the accused to commit the offense charged in the indictment. Two, if so, was the accused ready, willing and able, without persuasion, and was he awaiting any propitious opportunity to commit the offense.

On the first question, namely, whether the agent induced the accused to commit the offense, the accused has the burden of proof. Such burden in showing inducement is relatively slight; some

credible evidence is sufficient.

On the second question, namely, the predisposition of the accused to commit the crime, the prosecution has the burden of proving the same beyond a reasonable doubt.

Now, stated in another way, the word "entrapment" that I have just used is a legal term, and it has a technical meaning, not that of the popular colloquial ordinary usage. Criminal activity is such that sometimes stealth and strategy are necessary methods to be used by law enforcement officers.

The function of law enforcement is not only the prevention of crime, but also the detection and apprehension of criminals. That function, however, does not include the manufacturing of crime.

The defense of entrapment is based upon the policy of law not to ensnare or entrap an innocent person into the commission of a crime, but a line must be drawn between the entrapment of the unwary innocent and the trap for the unwary criminal.

A basic feature of entrapment is that the idea or design of committing the crime originated with the law enforcement officer rather than with

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a defendant. That the defendant had no previous disposition, intent or purpose to commit the alleged offense, and that the law enforcement officer or a Government employee implanted in the mind of an innocent person the disposition to commit the alleged offense, and instituted and incited its commission in order that the defendant might be arrested and prosecuted.

If you find that an agent or an employee of the Government afforded a favorable opportunity or facility to the defendant for the commission of the alleged crime, such conduct on the part of the Government does not constitute entrapment. Entrapment would occur only if you find that the Government agent induced the defendant to commit the crime charged in the indictment, and that the criminal conduct of the defendant was a product of the Government's activity.

If you find any credible evidence creating the reasonable possibility that a Government agent or employee instituted and incited or otherwise induced the defendant to commit the crime charged, then the Government must prove beyond a reasonable doubt that inducement was not the cause or creator

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of the crime. That is, that the defendant had been predisposed and willing to commit the crime. If the prosecution has satisfied you beyond a reasonable doubt that the defendant was ready and willing to commit the offense charged, but was merely awaiting a favorable opportunity to commit the offense, then you may find that the inducement, if any, which brought about the actual offense, was not more than a providing of what appeared to be to the defendant, to be a favorable, or timely, or convenient opening or facility for the criminal activity in which the defendant may have preferred to engage.

In such circumstances, you may find that the Government agent has not seduced an innocent person or persons by only providing the means for the defendant to effectuate or realize his own then existing purposes.

Statements and arguments of counsel are not evidence in the case unless made as an admission or stipulation of fact. When attorneys on both sides stipulate or agree to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved.

Unless otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them, and all facts that have been admitted or stipulated to, and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court and any evidence ordered stricken by the Court must be entirely disregarded.

Evidence does include, however, what is brought out from witnesses on cross-examination as well as what is testified to on direct examination. Unless otherwise instructed, anything you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded.

You are to consider only the evidence in the case and your verdict is to be based upon the evidence only, but in your consideration of the evidence, you are not limited to the bald statements of the witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. You are permitted to draw from facts which you find have been proved such reasonable

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inferences as you feel are justified in the light of experience.

Inferences are deductions or conclusions which reason and common sense lead the jury to draw from the facts which have been established by the evidence in the case. If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of that fact. The lawyers' statements are not evidence.

Evidence relating to any statement or act or omission claimed to have been made or done by the defendant outside of Court and after a crime has been committed, should always be considered with caution and weighed with great care, and all such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement or act or omission was knowingly made or done.

A statement or act or omission is knowingly made and done, if done voluntarily and intentionally and not because of mistake, accident or other innocent reason. In determining whether any statement or act or omission claimed to have been made by the defendant outside the Court and after a crime has been

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committed was knowingly made or done, the jury should consider the age, sex, training, education, occupation and physical and mental condition of the defendant, and his treatment while in custody or under interrogation and shown by the evidence in the case, and also all other circumstances in evidence surrounding the making of the statement, or act or omission.

If you find from the evidence in the case, that the evidence does not convince you beyond a reasonable doubt that the statement was made voluntarily and intentionally, you should disregard it entirely. On the other hand, if the evidence in the case does show beyond a reasonable doubt to you that the statement was, in fact, voluntarily and intentionally made by the defendant, you may consider this evidence in the case against the defendant who voluntarily and intentionally made the statement.

You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all of the testimony given, the circumstances under which each witness has testified, and every matter

in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, motive, his state of mind and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he or she has testified, and whether he or she impresses you as having an accurate recollection of these matters.

Consider also the relationship each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or transaction may see or hear it differently. And innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy always consider whether it pertains to a matter of

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2 importance or an unimportant detail, and whether
3 the discrepancy results from innocent error or
4 intentional falsehood. After making your own
5 judgment you will give the testimony of each witness
6 such credibility, if any, as you may think it
7 deserves.

8 The testimony of an informer who provides
9 evidence against the defendant for pay or for
10 immunity from punishment, or for personal advantage
11 or vindication, must be examined and weighed by the
12 jury with greater care than the testimony of an
13 ordinary witness. The jury must determine whether
14 the informer's testimony has been affected by
15 interest or by prejudice against the defendant.

16 The law does not prohibit the use of an
17 informer but whether you approve of their use is
18 not to enter into your consideration of the case.
19 In certain types of crimes, the Government of
20 necessity is frequently compelled to rely upon the
21 testimony of an informer and persons with criminal
22 records, otherwise it would be difficult to
23 detect or prosecute some wrongdoing. Often the
24 Government has no choice in the matter. It must
25 take the witnesses to the transactions as they are.

24

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. It is the province of the jury to determine the credibility, if any, to be given to the testimony of a witness that has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have the right to discredit such witness' testimony in other particulars, and you may reject all of the testimony of that witness or give it such credibility as you think it may deserve.

A defendant who wishes to testify is a competent witness and the defendant's testimony is to be judged in the same way as that of any other witness. The law permits the defendant, at his own request, to testify on his own behalf.

The testimony of an individual defendant is before you. You must determine how much it is credible. The deep personal interest which every defendant has in the result of a case should be considered in determining the credibility of his testimony. You are instructed that the interest creates a motive for false testimony and that the

greater the interest, the stronger the temptation. The interest of a defendant is of a character possessed by no other witness and is, therefore, a matter which may seriously affect the credence to be given to his testimony.

It is the duty of the attorneys on each side of the case to object when the other side offers testimony or offers evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made an objection.

Upon the allowing of the testimony or other evidence to be introduced over the objection of an attorney the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and must draw no inference as to the wording of it or speculate as to what the witness would have said if he would have

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The fact that the Court has asked one or more questions of the witness for clarification or admissibility of evidence purposes is not to be taken by you in any way as indicating that the Court has any opinion as to the guilt or innocence of the defendant in this case, and you are not to draw no such inferences therefrom. That determination is up to you and to you alone, based on all the facts in the case and the applicable law and these instructions.

You are here to determine the guilt or innocence of the accused from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the accused, you should so find even though you may believe one or more other persons are guilty. But, if any reasonable doubt remains in your mind after impartial consideration of all of the evidence in the case, it is your duty to find the accused not guilty.

The verdict must represent the considered

1 judgment of each juror. In order to return a verdict
2 it is necessary that each juror agree thereto.
3 Your verdict must be unanimous.
4

5 It is your duty as jurors to consult with one
6 another and to deliberate with a view towards
7 reaching an agreement, if you can do so without
8 violence to individual judgment. Each of you must
9 decide the case for himself or herself, but do so
10 after an impartial consideration of the evidence
11 in the case with your fellow jurors.

12 In the course of your deliberations do not
13 hesitate to reexamine your own views and change your
14 opinions if convinced it is erroneous but do not
15 surrender your honest conviction as to the weight
16 or affect of evidence, solely because of the opinion
17 of your fellow jurors, or for the mere purpose of
18 returning a verdict. Remember at all times you
19 are not partisans, you are judges, judges of the
20 facts. Your sole interest is to seek the truth
21 from the evidence in the case.

22 There is nothing particularly different in
23 the way a juror should consider the evidence in
24 a criminal case from that in which all reasonable
25 persons treat any question, depending on evidence

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presented to them. You are expected to use your good sense, your good common sense. Consider the evidence in the case for only those purposes for which it has been admitted and give it reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If the accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which controls during your deliberations.

The punishment provided by law for the offense charged in the indictment is a matter exclusively within the province of this Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.

Now, upon retiring to the jury room, juror number one, the juror seated closest to me in the first row will act as your Foreman unless you choose not to, and if so, then it will be necessary that

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2 you elect another person from amongst your number.
3 The Foreman will preside over your deliberations
4 and will be your spokesman here in Court.

5 If it becomes necessary during your delibera-
6 tions to communicate with the Court, you may send
7 a note by a deputy marshal outside, stationed
8 outside the jury room door, signed by the Foreman
9 or by one or more members of the jury. No member
10 of the jury should ever attempt to communicate with
11 the Court by any means other than a signed writing
12 and the Court will never communicate with any
13 member of the jury on any subject touching the
14 merits of the case other than in writing or
15 orally here in open Court.

16 You will note from an oath which will be
17 taken shortly by the deputy marshals, that they
18 too, that they too as well as all other persons
19 are forbidden to communicate in any way, or manner
20 with any member of the jury on any subject touching
21 the merits of the case.

22 Now bear the following in mind because it's
23 very important. You are never, never to reveal to
24 any person, not even to me, how the jury stands
25 numerically or otherwise on the question of the

Charge

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2 guilt or innocence of the accused until after you
3 have reached a unanimous verdict. In other words,
4 do not, and I repeat, do not send me a note stating
5 that the jury stands seven-five for conviction
6 or acquittal, and we don't know what to do now,
7 your Honor. If you reach a hopeless impasse, write
8 me a note saying "We have reached a hopeless
9 impasse." If you send me a note saying that we
10 stand numerically one way or the other, then the
11 chances are that I will have to declare a mistrial
12 and another jury will have to just re-try the case.
13 You don't have to send me such a note, just send
14 me a note saying you're hopelessly deadlocked, if
15 you reach that stage, and I hope you won't.

16 When and if you have reached a unanimous
17 verdict one way or the other, you send me a note
18 saying, "We have reached a unanimous verdict."
19 You announce your verdict to me and to everybody else
20 in open Court after I call you and after that note
21 has been received, but not before then.

22 Those are the instructions of the Court,
23 ladies and gentlemen. The practice that will follow
24 from this point on is that we will take a brief
25 recess while I discuss the instructions with the

Charge

1 attorneys. After that while, it will be about
2 five minutes from now, you'll be recalled and
3 I will discharge the alternate jurors and then
4 you may begin your deliberations but not before.
5 Don't start discussing the case in any way during
6 this five minute recess.

7
8 Okay, you are excused.

9 (Jury leaves jury box.)

10 THE COURT: I only have one statement to
11 make and I guess I owe Ms. Schwartz an apology,
12 because when I referred to an attorney in the course
13 of the charge I said "his" and I guess that's
14 not permissible in this day and age.

15 MS. SCHWARTZ: I won't repeat it to Women's
16 Lib.

17 THE COURT: Anyway, you lost out last night
18 I understand in Florida.

19 MS. SCHWARTZ: It's just a dark day.

20 THE COURT: Any objections, Ms. Schwartz,
21 beyond that?

22 MS. SCHWARTZ: No, your Honor, that's it.

23 MR. KOHN: No exceptions, your Honor.

24 THE COURT: All right, bring the jury back
25 in.

United States District Court for Eastern Dist. of NY

United States of America vs.

M'FILMED

DEFENDANT

STANLEY FORSACK

DOCKET NO. →

77 CR 84

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date →

MONTH	DAY	YEAR
5	27	77

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to
counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

ROGER KOHN

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,☐ NOLO CONTENDERE,

There being a finding/verdict of { ☐ NOT GUILTY. Defendant is discharged
☒ GUILTY.

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 31 1977 ★

TIME A.M. _____
P.M. _____

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S. Code,
Sec. 922(a)(1) in that from on or about Sept. 29, 1976, the
defendant, through and including Oct. 14, 1976, did knowingly,
intentionally and unlawfully engage in the business of dealing
in firearms

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

IT IS ADJUDGED THAT the defendant is hereby committed to the custody
of the Attorney General or his authorized representative for imprison-
ment for a term of three years and that defendant shall become eligible
for parole under 18 USC 4205(b)(2) at such time as the Parole Commission
may determine; and the defendant shall pay a fine to the United States
in the sum of \$5,000.00, such fine to be paid within 30 days. Execution
of sentence of imprisonment is stayed pending appeal.

BEST COPY AVAILABLE

**SPECIAL
CONDITIONS
OF
PROBATION****ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT
RECOMMEN-
DATION**

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge☐ U.S. Magistrate*Thomas C. Platt*

Date

May 31, 1977

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 10 day of August 1977 deponent served the within *App.* upon

U.S. Atty. East. Dist. of NY

attorney(s) for
Appellee

In this action, at

225 Cadman Plaza East, Brooklyn, NY

the address(es) designated by said attorney(s) for that purpose by depositing 1 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

U.S. Atty.
225 Cadman
Brooklyn

Robert Bailey
ROBERT BAILEY

Sworn to before me, this 10 day
of August 1977

William Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978